



U.S. AIR FORCE

**GUIDE
FOR THE
GOVERNMENT- CONTRACTOR
RELATIONSHIP**

OCTOBER 2006

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CHAPTER 1 - INTRODUCTION

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This guide is a compilation of ethics and acquisition issues related to the presence of contractors in the Federal workplace. Information for this guide was gathered from various sources within the Department of Defense.

1.1 It is important for government employees to understand the nature of the relationship between the government and the contractor and the contractor's employees. The desire to treat the contractor as part of the team is understandable, but government employees must realize the potential risks they impose on the government and contractor if they allow special treatment in any number of situations.

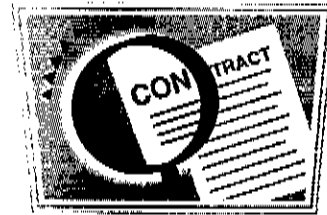
1.2 Just as different rules apply to AF Civilians and military, so too, contractors abide by a different set of rules. AF employees are subject to Federal laws and regulations, as well as AF and DOD rules. Contractor personnel are employees of a contractor – they are subject to the laws that apply to all individuals (such as bribery) the terms and conditions of their individual contracts with their employer and the applicable terms and conditions of their employer's contract with the government. This guide provides government employees an understanding of the laws and rules and how they apply to various situations that may arise within the government-contractor relationship.

1.3 Many of the challenges that arise out of the government-contractor relationship begin in the area of the personal services vs. nonpersonal services contract. This guide begins with a general discussion of this personal/nonpersonal services issue. It then addresses various subject areas that government employees may encounter in the government-contractor relationship. The guide does not contain examples of every situation a government employee may encounter when interfacing with contractor personnel. It simply provides information/guidelines that will assist government managers in making informed decisions when faced with questions regarding the government-contractor relationship. In each of the chapters, there is a general discussion of the issue followed by a set of guidelines for that particular area. This guidance is not a substitute for ethics and legal advice. If you have questions or need advice about a specific situation, you should always consult your legal counsel.

The Defense Acquisition University (DAU) has created an on-line course entitled "Ethics in the Era of Partnering." This course can be accessed at the following website: https://golearn2.csd.disa.mil/kc/login/login.asp?kc_id=kc0001. Students must register with the site to obtain access to the course list.

CHAPTER 2 – PERSONAL SERVICES VS. NONPERSONAL SERVICES

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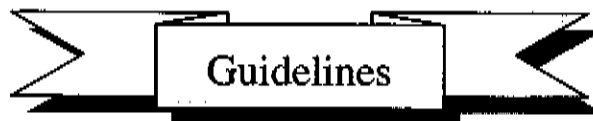


2.1 Personal versus non-personal services contracts is a confusing issue. A personal services contract is characterized by an employer-employee relationship where employees are directly hired under competitive appointment or other standard civil service procedures. Personal services contracts trigger certain rights and responsibilities, including payment of benefits, tax withholding and application of conflicts of interest statutes [10USC 129b and DFARS Part 237.104].

2.1.1 A nonpersonal services contract is a contract under which the personnel providing the services are not subject to the supervision and control usually prevailing in relationships between the government and its employees. Under a non-personal services contract, a contractor dictates its employees' compensation, benefits and rewards. The government contracts for a required service, specifies the details in a statement of work or task order, and reviews and approves and pays for work products, not individual performance.

2.2 Obtaining personal services by contract, rather than by direct hire, circumvents those laws except where Congress has specifically authorized acquisition of the services [5 USC 3109 and FAR Part 37.104]. Government employees are required to keep the relationship with contractors above reproach:

“Each [government] employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the federal government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.” [5 CFR 2635.101; DOD 5500.7-R, Chapter 2, Section 2-100 – also known as the Joint Ethics Regulation]



General Guidelines for Maintaining a Proper Government-Contractor Relationship

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1. Remember that contractor personnel are not government employees.
2. Identify contractor personnel as such with distinctive badges.
 - (a) Clearly identify the contractor's work area. This will help preclude any appearance of a personal service relationship between government employees and contractor personnel.
 - (b) Contractor identification should also extend to E-mail accounts. E-mail, and signature blocks should clearly identify contractor personnel.
3. Respect the employer-employee relationship between contractor and their employees.
4. Be aware of intellectual property rights in the federal workplace. The terms of the specific contract will determine the contractor's rights, but often the contractor is allowed to legally profit from products it develops in the federal workplace.
5. Report possible conflicts by contractor personnel to include violations of the law (including but not limited to Procurement Integrity statutes and regulations). Be sensitive to appearances created by close relationships between government and contractor personnel. Seek assistance from legal counsel. Unduly close personal relationships with contractor personnel can create the appearance of favoritism, and may call into question the integrity of the procurement process. [For military members, AFI 36-2909, Professional and Unprofessional Relationships]
6. Safeguard proprietary, Privacy Act, and other sensitive and nonpublic information. Release of certain types of information to unauthorized contractor personnel could violate the Procurement Integrity Act, the Trade Secrets Act, the Privacy Act, the Joint Ethics Regulation and/or other laws that could subject the releaser to civil and/or criminal penalties.
7. Clearly describe all contract taskings.

8. Ensure only the contractor's task leader assigns taskings to contractor personnel.
9. Set the example—as leaders, establish and maintain high ethical standards. Emphasize the AF “Core Values” in upholding these standards. Address ethical issues promptly and confer with legal counsel.

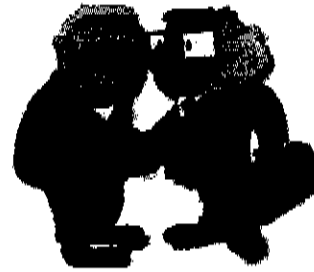


1. Don't become so involved as a government official in the operations and policies of the contractor such that your judgment alone forms the basis for contractor actions such as:
 - (a) Selecting or recruiting contractor personnel
 - (b) Directing, scheduling, or critiquing individual contractor tasks on a continuous basis
 - (c) Supervising contractor personnel
 - (d) Rating individual contractor personnel performance
 - (e) Hiring or firing individual contractor personnel
 - (f) Determining who should perform contract tasks or how they should be done
 - (g) Pressuring the contractor to use “favorite” personnel, or insisting on particular personnel actions
2. Don't use government and contractor personnel interchangeably.
3. Don't intervene in the contractor's chain of command.
4. Don't require “out of scope” work, personal services, or performance of “inherently governmental functions.” The services the contractor is required to provide through its personnel are set forth in the contract -- there are no “and other duties as assigned.”
5. Don't give the incumbent contractor a competitive advantage by including its personnel in re-competition meetings or by allowing the contractor's personnel to overhear or gain access to planning information.

6. Don't solicit or accept gifts from contractor personnel. Contractor employees are "prohibited sources" and the rules for giving and getting gifts are very strict. Government employees may not solicit contractors and their personnel to provide or contribute to office gifts such as a retirement gift. In addition, we may not solicit Combined Federal Campaign (CFC) contributions from contractor personnel. Before accepting any gift from a contractor, whether from the company as an organization or a specific employee, you should consult with the Ethics Advisor at the local legal office.

CHAPTER 3 – IDENTIFICATION OF CONTRACTOR PERSONNEL

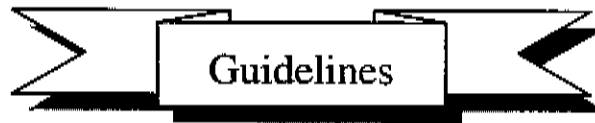
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3.1 Contractors have become an integral part of government activities. Unfortunately, it is often difficult to distinguish between contractors and civil service employees. Unidentified contractors in the federal workplace can be a source of issues and concerns, to include:

- (a) Advance release of procurement information which might include details of a procurement before public announcement giving unfair advantage to one or more contractors
- (b) Disclosure of source selection information to include source selection plans, evaluation factors, exact funding amounts, contractor proposals, and proposal evaluations
- (c) Conversion to improper personal services contracts where contractor personnel are managed as though they are government employees
- (d) Risk of unauthorized work direction
- (e) Performance of inherently governmental functions by contractors, such as, Program Element Monitor (PEM) duties, Program Management duties and other resource allocation decision making

3.2 Many of the contractor personnel working side by side with government employees were once government employees themselves (e.g., retired military or former civil servants). It is important that government employees recognize that these individuals' employment status has changed and, therefore, so have the rules applied to that employee. Similarly, it is important that contractor personnel understand that their status is different.



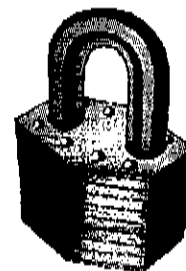
Identification of Contractor Employees

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1. All contracts should require that contractor personnel wear distinctive nametags, company shirts or company badges for identification purposes.
2. Identify contractor's status on correspondence, in telephone conversations and in meetings they attend. E-mail accounts for contractor personnel shall follow the naming conventions of AFI 33-119, paragraph 5.3. In addition, contractor signature blocks on E-mail messages should identify their status.

CHAPTER 4 – INDUSTRIAL SECURITY

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4.1 It's easy to think of contractors as fellow government employees. In many cases, contractor personnel were once members of the active duty or civilian service. We must remember that these individuals are no longer government employees! This becomes especially important when we prepare, store, have access to and discuss sensitive "For Official Use Only" information—information that we would not release if requested by a member of the public under the Freedom of Information Act.

4.2 We must protect the documents, disks, CD-ROMs, slides and shared servers on which sensitive information is stored. We must not leave it on our desk for the casual observer to read. The offices, cubicles, conference rooms, hallways, bathrooms, cafeterias, and break rooms are not secure areas for discussing sensitive information. When we conduct meetings in which sensitive information is about to be discussed, we must ensure that we know who is attending and determine whether the information can be disseminated to them. In addition to avoiding accidental disclosure, we must ensure that we do not purposely disclose sensitive information. Before we turn over information to a contractor to develop visual aids, create a database, provide consultations, or repair the hard drive on our computer, or before we invite contractor personnel to a meeting, we must ensure that it is proper for the contractor to have access to the information. Even though the contractor effort is within the scope of the support contract, task order or delivery order, there is some information that we may not release outside the government. Some of this information is specifically protected by the Procurement Integrity Act [[41 USC 423](#)] and the criminal law prohibiting the release of confidential information [[18 USC 1905](#)]. Even if an improper disclosure does not violate any specific law, the result can be reduced competition, unfair competitive advantage, an appearance that the process lacks integrity, and/or protests and possible subsequent litigation.

4.3 A government employee must ensure that any information he or she discloses is in compliance with the various restrictions on disclosing government information. DoD policy identifies some categories of information that are not releasable. Categories of information that should not be released include: (1) classified information; (2) Planning, Programming, Budgeting and Execution System (PPBE) information; (3) contractor proprietary information; (4) unsolicited proposal information; (5) internal agency communications; (6) source selection information; and (7) a release of information that would create an unfair competitive advantage [[AFMC Attorneys Guide to Acquisition Reform, paragraph 4.1.2](#)]. More specific rules on disclosure are summarized as follows:

- (a) Non-public information. Employees may not disclose “non-public information” to further the private interest of any individual, company or organization. [5 CFR 2635.703(a)] “Non-public information” means information that the employee gains by reason of federal employment and that he or she knows (or reasonably should know) has not been made available to the general public. [5 CFR 2635.703(b)]
- (b) Advance procurement information. “A high level of business security must be maintained in order to preserve the integrity of the acquisition process.” [FAR 5.401(a)] Employees participating in the acquisition process may not disclose: (a) information on plans that would provide undue or discriminatory advantage to private or personal interests, (b) information received in confidence from an offeror, (c) information otherwise requiring protection under the Freedom of Information Act or Privacy Act, or (d) information pertaining to internal agency communications (e.g., technical reviews, contracting authority or other reasons, or recommendations referring thereto). [FAR 5.401(b) & (c)]
- (c) Releasing information about a procurement before solicitation is issued. “Information concerning proposed acquisitions shall not be released outside the government before solicitation except for presolicitation notices IAW FAR 14.205 or FAR 36.213-2, or long-range acquisition estimates IAW FAR 5.404, or synopses IAW FAR 5.201. Within the government, such information shall be restricted to those having a legitimate interest. Releases of information shall be made (a) to all prospective bidders, and (b) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another.” [FAR 14.211(a)]
- (d) Information related to a source selection. Employees may not disclose contractor bid or proposal information or source selection information. [41 USC 423(a), (f)(1), (f)(2); FAR 3.104-4(a)] [Note: This is information related to a specific source selection.]
- (e) Information Protected Under the Trade Secrets Act. The Trade Secrets Act states that, unless authorized by law, an employee may not publish or disclose any information (a) that comes to him/her in the course of his/her employment or official duties, and (b) that concerns or relates to the trade secrets, processes, operations, style of work or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. [18 USC 1905]
- (f) Intelligence. Releasing intelligence to contractors must comply with AFI 14-303, *Release of Intelligence to US Contractors*, 1 April 1999.

In addition, government employees are strongly cautioned to identify the true source of information before relying on a document. Many documents that may appear to be

“government” documents may actually be documents drafted by an outside source. A good rule of thumb is to always check the source of the document before relying on it.

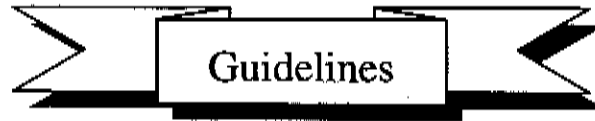
4.4 The increasing presence of contractors in the federal workplace has raised concerns in the area of physical security and the propriety of contractor personnel performing end-of-day security checks. Several questions arise in the area of physical security and its application to contractor personnel:

- (a) Is it legally permissible for contractors to perform after hours security checks?
- (b) Does the contractor assume total responsibility/liability for this activity?
- (c) Is it permissible to add a requirement to the contractor’s statement of work (SOW) requiring the contractor to perform end-of-day security checks?

4.5 Many organizations have contractor personnel from several different companies, all working in close proximity. Many of these companies are in direct competition for support contracts. If classified, sensitive unclassified or company proprietary information gets into the wrong hands and one company gains unfair advantage over another, it could result in legal action. AFI 31-601, paragraph 5.2.4, mandates that contractor access be limited to “contract specific information.” Therefore, requiring offices must ensure that the contract’s scope clearly extends to the daily support being requested and the contractor performance. This is particularly important when competing contractors occupy the same work area and one could be responsible for the after-hours check of the other.

4.6 Requiring contract personnel to perform end-of-day security checks may place the contractor in a position of liability for property or information over which it has no control. Therefore, security checks should be the responsibility of government employees who are authorized to control the physical premises. As a general rule, it is preferable to have only government employees perform end-of-day security checks; however, situations may arise when contractor personnel may end up accomplishing this activity. Contractor personnel may not be delegated the responsibility for end-of-day security checks unless their contract specifically provides for such delegation. Before placing an end-of-day security check requirement in the contract, the multi-functional team should address issues that may arise in the following situations:

- (a) One contractor performs the end-of-day security check for another contractor.
- (b) A contractor potentially has access to classified, sensitive unclassified or company proprietary information while performing an end-of-day security check.
- (c) Contractor personnel are placed in a position of liability for property over which they may have no accountability or control.



Industrial Security

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1. Ensure you disclose and discuss sensitive information only with those who have a need to know.
2. Do not include contractor personnel in discussions or otherwise give them access to information if it will violate a law or regulation (see restrictions in paragraph 4.3) concerning its release outside the government, or if it will give their employer an improper competitive advantage.
3. When you are in a meeting in which advanced acquisition or sensitive information is to be discussed, ensure you know who the participants are. If in doubt, ask!
4. Be aware of the environment around you. Do not discuss sensitive information in areas that are not secure (e.g., bathrooms, hallways, cafeterias). Do not leave sensitive information in an area where contractor personnel may observe the information (i.e., your desk or work area).
5. Proprietary information is releasable to a contractor only if protected by appropriate contract clauses and non-disclosure releases.
6. Consult your legal counsel if you have questions about releasing sensitive information. Generally legal opinions are protected by client-attorney privilege and are not releasable outside of the government. An attorney's advice is confidential and privileged and only legal counsel has the authority to waive the privilege. In addition, contractors are not entitled to legal advice from government attorneys.
7. Do not place contractor personnel in a position of liability for property over which they have no contractual authority, accountability or control.
8. Do not delegate responsibility for end-of-day security checks to contractor personnel unless their contract specifically provides for such delegation. Keep in mind that many times competing contractors occupy the same work area when contractually requiring one contractor to perform end-of-day security checks over another contractor. Under these circumstances, a contracting officer must exercise extreme caution when placing an end-of-day security check requirement in the contract.
9. Legal problems could result if contractor personnel obtained unauthorized access to classified, sensitive unclassified, or company proprietary information.

CHAPTER 5 – RECOGNITION AND AWARDS

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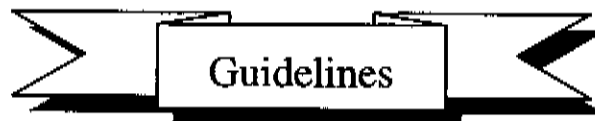


5.1 Frequently, the subject of what can be done to recognize and award contractor personnel comes up. The ability to provide awards to military and civilian employees is authorized by statute and the discretionary authority of the organizational commander [[10 USC Chapter 857 & 5 USC Subpart C](#)]. No such statutory authority covers contractor personnel. The regulations that authorize awards to government employees do not apply to contractor personnel. [DOD Manual 1400.25](#) and [AFI 36-1004](#), paragraph 1.9 specifically indicate that it is the DoD policy to not recognize private citizens or private entities that have a commercial or profit making relationship with the Department, unless the contribution is substantially beyond that specified or implied in the terms of the contract establishing the relationship, or the recognition is in the public interest. Even in such an extreme situation, recognition is honorary only (emphasis is provided in [AFI 36-1004](#)). If individual contractor personnel have performed exceptionally well or made a contribution that significantly exceeds the terms of the contract, the government may acknowledge that contribution by a letter to the individual's company. This "letter of appreciation" must be coordinated with the cognizant contracting officer who will send it to the contractor. The contractor will then present it to the employee. The contracting officer must ensure, prior to coordination, that 1) the letter of appreciation does not conflict with any CPARs information and the recognition cited does not exceed the scope of the contract. 2) the letter has been reviewed by the local ethics official to ensure the language does not improperly imply endorsement of the contractor.

5.2 In addition, numerous contractual and legal reasons limit the recognition of individual contract personnel. These include issues involving contract administration and past performance evaluations; statutory limitations on personal services contracts, and the need to clearly delineate contractor personnel and government employee roles; limitations under the Joint Ethics Regulations and other DoD guidance; the terms and conditions of contracts and the nature of the services the government is buying; and specific Air Force guidance found in [AFI 36-1004](#). In order to fully understand this issue, we must review the relationship between the contractor and the government and the appropriate mechanisms available to reward contractor performance.

5.3 The government generally acquires nonpersonal services. Through their individual contracts, contractors provide a capability that must be tied to the contract statement of work. Contractor personnel are subject to the laws that apply to all individuals (such as bribery), the terms and conditions of their individual employment agreements with their employer and with the applicable terms and conditions of their employers' contract with the government. Under a nonpersonal services contract, the contract employer sets forth the employee's compensation, benefits and rewards. Under this arrangement, it's the contractor's duty to incentivize its employees and to increase morale and productivity.

5.4 The government constantly monitors and records a contractor's demonstrated record of contract compliance in supplying products and services that meet users' needs. Ultimately, good performance is rewarded by either explicit financial incentives (such as an award fee) or indirectly by way of positive Contract Performance Assessment Reports (CPAR), which garner future business. Future business may very well come by the extension of the present contract through exercise of an option. The use of local awards programs for individual contractor personnel performance could potentially undermine the formal regulatory framework for monitoring such performance. The employee awards program ostensibly rewards superior *individual* effort. While this appears equitable to the individual, the government ultimately depends on the output of the contractor as one entity. A situation could arise whereby the local contractor personnel are rewarded, but overall the contract performance is inadequate. In such a situation, a poor contractor CPAR on a specific contract would seem inconsistent with individual employee awards, resulting in confusion and potential litigation. It is up to the contractor to determine how awards/rewards are passed on to its individual employees.



Recognition and Awards

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1. Avoid the appearance of an employer/employee relationship with contractor personnel. We contract for the overall service, not with the individual contractor personnel. If individual contractor personnel are rewarded by the government rather than the contractor, it gives the appearance of an improper personal services contract.
2. Do not become involved with the contractor's management of its personnel. Contractors supervise their personnel and we must allow them to decide the best method and forum for rewarding them. Do not bypass the contractors' management to present "letters of appreciation" directly to individual contractor personnel. Coordinate the "letter of appreciation" with the contracting officer and local ethics official and let the contractor make the presentation to its employee.
3. Use the contracting officer to ensure consistency in our interactions with the contractor. Although a contractor may be doing outstanding work in one area, the contracting officer may be taking corrective action to resolve deficiencies in other areas of the same contract. The conflicting signals may confuse the contractor and any outside parties who attempt to resolve the situation.
4. Ensure contract performance is within the scope of the contract. Recognizing a contractor for something above and beyond the tasks we are paying for could result in a claim for additional funds.

CHAPTER 6 – TIME MANAGEMENT

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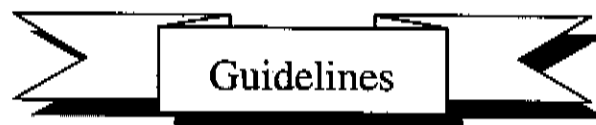
6.1 Commander's calls, sports days, employee quality of life meetings, staggered reporting times, down-days (goal days), physical fitness time, office picnics, and holiday parties are many activities that occur in the federal workplace. The question of whether contractor personnel can participate in these activities has caused a great deal of frustration, confusion and concern. Since contractor personnel are not government employees, the government cannot grant contractor personnel the same duty time activities as government employees. A contractor has a legal right to establish rules of conduct and attendance for its employees. Interfering with these rules may create a liability for which the contractor may claim compensation. Directing or inviting contractor personnel to participate in government employee duty time activities generally interferes with the manner in which a contractor manages its business. Such direction may transform contractor services from non-personal to personal and is not permissible.

6.2 In cost-type contracts (including labor hour contracts), in order for a contractor to receive payment from the government for its employees' time, the cost must be an allowable cost under the contract. An allowable cost is one that is "allowed" to be charged IAW FAR 31.201-2. Costs must be both allowable and allocable. A cost is allocable if it is assignable or chargeable to one or more contract cost objectives. [FAR 31.201-4] Normally a service contract does not identify the task of participation in morale-building activities during business hours—so the contractor would not get paid for such activities. Simply making such tasks part of the work requirements does not resolve the issue. Fiscal law considerations such as bona fide need, proper purpose of appropriated funds and anti-deficiency issues operate to discourage this option. Contractor personnel (excluding fixed-price contracts) work billable hours tied to the contract performance requirements. They are not paid to attend morale building events and do not get paid time-off for "down days." Any compensation or payment for work not accomplished is a violation of federal statute, criminally punishable as a false claims under 31 USC 3729. Submitting a claim to the government for payment of time not worked is a violation of the law regarding false or fraudulent claims. Additionally, if you tell a contractor to submit a false claim, and the contractor does so, you could both be charged with conspiracy to defraud the United States. Contractor personnel can attend appropriate mission-related planning sessions, program management reviews, or other program-related activities. However, adding a requirement in the contract for the contractor to support morale activities (sports day, office picnics, golf outings, holiday parties or other like functions) is unacceptable.

6.3 In general, while the government may elect to pay contractor personnel for participation in training or dispute resolution discussions when required by the contract,

the government cannot pay the contractor for entertainment costs. [FAR 31.205-14] Reimbursement of contractor morale and welfare expenses is also limited. [FAR 31.205-13] The government should be cautious about inviting contractor personnel to leave their place of employment for recreational events because it creates the expectation of payment. Even when the contractor knows that it will not be paid for services not delivered during the absence of its employees, the contractor may feel obligated to have its employees attend.

6.4 The government may permit contractor personnel working on-site to attend morale building events when the government believes that it would enhance performance. The contracting officer, considering the terms of the contract and the specific nature of the event, should make the determination as to whether the performance of contractor personnel would be enhanced by attending such a function and an ethics counselor should be consulted. Additionally, the contractor personnel must make arrangements with their contractor supervisor for appropriate leave or other unbillable status under the contract. Care must also be taken neither to permit the contractor to subsidize the DoD event, which would be a gift from a prohibited source, nor to allow government funds to pay for the morale and welfare of unauthorized persons. While it is commendable to work productively with contractors as part of a team, you cannot ignore your responsibility as a government employee to manage government resources carefully. The overarching ethical principle is to avoid any action that creates even an appearance of violating either the law or ethical standards.



Time Management
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1. There should be no official encouragement for contractor personnel to leave their workplace to attend a morale building activity.
2. Individual contractor personnel time off, and the nature of the time off (e.g., leave, Personal day, administrative absence) are between the contractor and its employees. When a contractor's employee is absent, the contractor cannot bill for services not delivered. The contractor may also have concerns about issues such as contract schedules, delivery dates, and other matters. Accordingly, the contractor must decide if, and under what conditions, its employees may be absent.
3. Contractor personnel may not be tasked or asked to volunteer to organize morale-building events. Before allowing them to "volunteer" to assist and participate on their "own time" the circumstances should be reviewed with your legal counsel.

4. Government officials are not authorized to grant "administrative leave" or expend government resources to compensate contractor personnel to attend government-sanctioned morale building activities (e.g., picnics, golf outings, holiday parties, sports day events, fitness time).
5. Holiday time off for contractor personnel is governed by the terms and conditions of the specific contract. Keep in mind that contractor personnel are not government employees, so if the President of the United States declares a federal holiday (or any other time off) that is not addressed in the contract, that day is not a holiday for contractor personnel. If the government office is closed on that day, then contractor personnel should seek appropriate guidance on duty location from his/her contractor supervisor. The contractor supervisor will then work with the government contracting officer to determine the appropriate guidelines and contractor personnel status.
6. For emergency base closures (to include closure due to inclement weather), the contracting officer should refer to the contract terms and conditions that address government down time. If the contract does not address emergency closures, the contracting officer should permit the contractor to (a) reschedule the time lost due to base closure; (b) report to an alternate duty location; or (c) provide equitable adjustment in accordance with the contract terms and conditions.

****Contracting officers are strongly encouraged to develop local contract clauses that address what a contractor should do in the event of an emergency base closure.****

CHAPTER 7 – GIFTS

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7.1 The standards of conduct rules on gifts fall into one of two categories: (1) gifts from outside sources; and (2) gifts between employees. When gift issues arise within the government-contractor relationship, the rules established for category (1) must apply because contractor personnel are not considered employees under the Joint Ethics Regulation (JER). The gift rules are found in 5 CFR 2635 Subpart B: Gifts from Outside Sources (JER sec 2-100). A brief summary of the rules follows:

Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (a) From a prohibited source, or
- (b) Given because of the employee's official position.

7.1.1 An **employee** under JER section 1-211 is a DoD civilian employee, any active duty officer or enlisted member, any Reserve or Guard member on active duty orders, any faculty member or student of a DoD school, and certain foreign nationals. Note: The term does not include an employee of a contractor or subcontractor.

7.1.2 A **gift** under 5 CFR 2635.203(b) is any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as training, transportation, local travel, lodgings and meals. It does not, however, include certain types of items (described further below).

7.1.3 A **prohibited source** under 5 CFR 2635.203(d) is any person who: (a) seeks official action by the employee's agency, (b) does business or seeks to do business with the employee's agency, (c) conducts activities regulated by the employee's agency, (d) has interests that may be substantially affected by the performance or nonperformance of the employee's duties, or (e) is an organization, a majority of whose members are described in (a) through (d).

7.1.4 A gift is solicited or accepted because of the employee's official position if it is received from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with the federal position.

7.1.5 Taken together, these definitions tell us that when an item qualifies as a gift, a contractor is considered a prohibited source for purposes of the gift rules. This means government employees may not solicit gifts from contractor personnel. They also may not accept unsolicited gifts from contractor personnel unless specifically authorized under an exception to the gift restriction.

7.2 There are two ways a government employee may accept something of value from an outside source (i.e., contractor personnel): (a) if the item does not qualify as a “gift,” or (b) if the item falls under one of the gift exceptions.

7.2.1 The following items are not “gifts:”

- (a) Modest items of food and refreshments offered other than as part of a meal
- (b) Greeting cards and items of little intrinsic value which are intended solely for presentation
- (c) Ordinary loans from financial institutions
- (d) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all government employees or all uniformed military personnel
- (e) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee’s entry into the contest or event is required as part of his official duties
- (f) Pensions and other benefits resulting from continued participation in employee welfare and benefit plans
- (g) Anything which is paid for by the government or secured by government contract
- (h) Any gift accepted by the government under specific statutory authority
- (i) Anything for which market value is paid by the employee

7.2.2 In addition, under 5 CFR 2635.204, there are 12 exceptions to the general rule that prohibits acceptance of gifts from outside sources or that are offered because of the employee’s official position. The exceptions are:

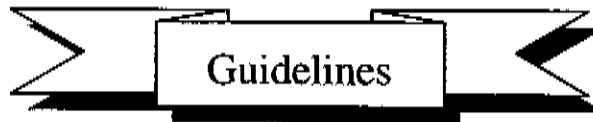
- (a) Gifts valued up to \$20 (up to a maximum of \$50 from the same source in one calendar year)
- (b) Gifts based on a personal relationship

- (c) Gifts that are certain discounts or similar benefits
- (d) Gifts associated with public service awards and honorary degrees
- (e) Gifts based on outside business/employment relations
- (f) Gifts from political organizations
- (g) Widely attended gatherings and other events
- (h) Social invitations (from other than prohibited sources)
- (i) Meals and entertainment in foreign areas
- (j) Gifts to the President or Vice President
- (k) Gifts permitted under Agency regulations
- (l) Gifts accepted under statutory authority

7.3 A government employee who receives a gift that cannot be accepted under the ethics rules must either:

- (a) Return the item or pay the donor its fair market value.
- (b) When it is not practical to return the item because it is perishable, the employee's supervisor or agency ethics official may direct the gift to be given to an appropriate charity, shared within the office, or destroyed.
- (c) For entertainment, favors, services, benefits or other intangible gifts, the recipient must pay the fair market value (subsequent reciprocation by the employee is not acceptable).
- (d) Dispose of gifts from foreign governments or international organizations IAW AFI 51-901.

7.4 Every base has a designated ethics advisor at the legal office. The safest course of action when dealing with any kind of gift is to seek advice from your ethics counselor.



Gifts

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1. Government employees generally may not accept items that qualify as gifts from contractor personnel. "Gifts" are defined in the Joint Ethics Regulation and summarized above.
2. Government employees may not solicit gifts from contractor personnel (e.g., retirement or any other gifts for government employees).
3. Government employees may not solicit Combined Federal Campaign (CFC) contributions from contractor personnel.

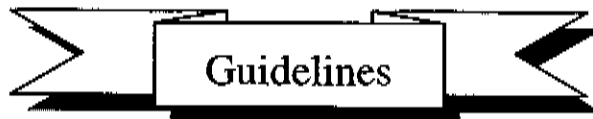
CHAPTER 8 – USE OF GOVERNMENT RESOURCES

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8.1 As a matter of policy, contractors are ordinarily required to furnish all property necessary to perform government contracts. There are times, however, when the government has unique property that it must provide to the contractor to accomplish the contract. It may be more cost effective or otherwise in the government's best interest to provide certain facilities and equipment. In these cases, the government may provide government facilities and equipment to a contractor. The contract must describe the property. The contractor is responsible and accountable for the property and must establish and maintain a system to control and protect the property. The contractor's system and procedures must be in writing. They must also be adequate to assure that the government property will be used only for those purposes authorized in the contract [FAR 45.509-2]. In addition, contractors shall ordinarily furnish any motor vehicles in performing government contracts. [FAR 45.304]

8.2 The contracting officer has the ultimate responsibility for determining the proper use of government property, but similar rules apply to contractor personnel as to government employees. The property can only be used for purposes authorized in the contract. The contract may permit use of government property on a rental basis for other commercial work of the contractor, but the contract must clearly identify the terms and conditions. Government property includes real and personal property in which the government has any property interest (including contract services) and is purchased with government funds. [5 CFR 2635.704(b)(1)]



Use of Government Resources

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1. Contractor personnel may use government resources for official business when authorized to do so by the contracting officer or his/her representative.
2. Contractor personnel may not use government resources in violation of any statute, regulation, rule or policy.
3. Within the United States, contractor personnel are not authorized to use government facilities or services such as the BX, commissary, medical care, or legal assistance unless they have AF reserve, Guard, retired military or dependent status that provides an independent entitlement. Outside the United States, contractor personnel may use these facilities or services if the contract authorizes them to do so. The Installation Commander may authorize contractor personnel to use base clubs, golf courses, gymnasiums and other recreational activities provided by the Air Force Services Agency on a space-available basis.

CHAPTER 9 – TRAINING

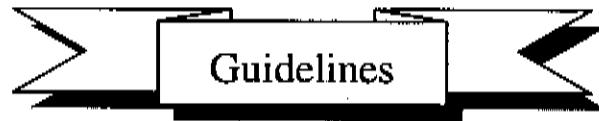
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9.1 The government may provide training to contractor personnel only if the contract requires it or it does not create a conflict or give the appearance that the government is favoring a contractor. If the government considers these issues and determines that allowing contractor personnel to attend government training is appropriate, then the issue becomes one of fiscal law. If the government has statutory authority to expend funds on training for non-government personnel, then it is a permitted activity. In most instances, there is no clear statutory authority. In those cases, the government must determine if training is a necessary expense under the relevant program appropriation [31 USC 1301(a)]. This involves weighing the cost associated with training non-government personnel against the benefit gained by the government in support of the appropriation that will incur the expense. Obviously, as the costs associated with the training increase so must the connection between the costs and the benefits gained by the government. Without the authority to retain training proceeds, any contractor reimbursements must be deposited in the General Fund of the Treasury's miscellaneous receipts. If it is determined that training is required, whether on a voluntary or mandatory basis, it should be included in the contract. A program manager should not authorize training for contractor personnel without contracting officer coordination and approval.

9.2 Accepting a gift of training from a prohibited source (contractor) is generally prohibited under 5 CFR 2635 Subpart B. There are some statutory and regulatory exceptions to these prohibitions that may permit government employees to take advantage of free contractor training. When offered a gift of training, a government employee's first step should be to contact his/her local ethics counselor. The counselor will determine if a particular exception would permit the employee to accept the training. If an exception applies, the counselor must then determine if any appearance issues would preclude accepting the gift. If the counselor determines that an exception applies and no substantial appearance of a conflict of interest arises from accepting the gift, then the counselor may advise an employee that he or she may accept the gift of free training.

9.3 Government employees should be aware that training provided by a contractor in accordance with a statement of work, or that is intended to facilitate the use of products or services that have been provided under a government contract, is not considered to be a "gift." Government employees may attend such training.



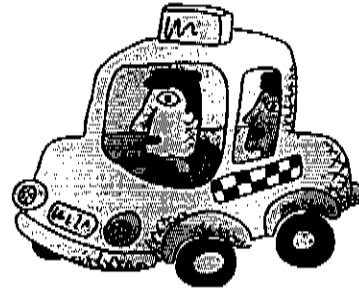
Training

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1. The government may provide training to contractor personnel if required by the contract and it doesn't create an appearance that the government is favoring one contractor over another.
2. Generally a "gift" of training offered by a contractor is prohibited. Government employees should contact their ethics counselor before accepting a "gift" of training.
3. Training provided by a contractor in accordance with a statement of work is not considered a "gift."

CHAPTER 10 – TRANSPORTATION AND TRAVEL

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10.1 Statutes and regulations govern the use of government transportation and the use of contractor transportation. Some actions that appear expedient or in the best interest of the government may violate these rules. Government officials should always consider the travel's purpose and surrounding circumstances to avoid the appearance of a conflict of interest. Allowable transportation sharing by government contractor personnel is dependent upon the circumstances surrounding the travel. When questions arise, the government employee should seek local legal counsel.

10.2 Transportation rules vary depending on the contract type. For situations involving ***fixed-price contracts*** where there are no provisions for direct reimbursement of contractor transportation expenses, contractor personnel and government employees should not share transportation.

10.3 For situations involving ***cost reimbursement contracts***, where contractor personnel are reimbursed for costs associated with performance of the contract, there are circumstances where government and contractor personnel may share transportation. Under cost-reimbursable A&AS contracts, government employees may ride in a vehicle paid for by the contractor if (a) the travel is under an A&AS contract, (b) the contract has a provision for direct reimbursement of the contractor for travel expenses, and (c) the government employees and contractor personnel are willing to share transportation. [Opinion of the Judge Advocate General of the Air Force ([OpJAGAF](#)) 2000/78, November 1, 2000].

10.4 The general rules governing transportation and travel are set forth below:

(a) Official travel by DoD employees must be funded by the federal government directly or through a contract, unless the travel or transportation services are accepted or processed in accordance with gift acceptance procedures and [Chapter 4 of the Joint Ethics Regulation](#): as a gift to the DoD Component under a gift acceptance statute, as a gift to the DoD Component under [31 USC 1353](#), as a gift from a tax-exempt organization under [5 USC 4111](#), or as a gift from a foreign government under [5 USC 7342](#). [DoD Standards of Conduct Office pamphlet, "Ethics Issues in Government-Contractor Teambuilding," 15Jul 99, page 39]

(b) Personal travel or transportation service provided by a contractor is considered a gift to the employee from a prohibited source. It may only be accepted if one of the exceptions allowing the [acceptance of a gift from prohibited sources](#) applies or

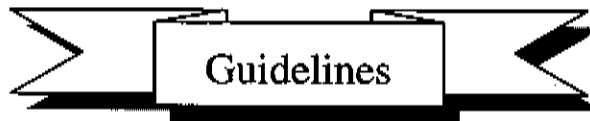
if the government employee pays fair market value. Contractor transportation provided for official business may be accepted in advance by an appropriate agency official as a gift to the government. [DoD Standards of Conduct Office pamphlet, "Ethics Issues in Government-Contractor Teambuilding," 15 Jul 99, page 40]

(c) The DoD Standards of Conduct Office has stated that transportation is acceptable if it is included in a contract between the government and the contractor. It appears that contracts for on-site *inspections* typically contain a provision requiring the contractor to make available to the Federal employee reasonable assistance for carrying out those official duties. Any contract provision requiring such "assistance" would appear to authorize acceptance of the transportation for official business in question." [DoD Standards of Conduct Office memo, "Travel Alternatives When Visiting Contractor Facilities," November 2003, pages 1-2]

(d) It is permissible for a government employee and contractor personnel who are on official travel to share the cost of a taxi. Sharing the cost of the taxi ride is permissible because each traveler would pay his or her pro-rata share to the neutral provider of the transportation. The government employee should, however, consider whether sharing a taxi might constitute an appearance of a conflict of interest. For example, it may not be advisable for a contracting officer in the midst of a source selection to share a taxi with an employee of one of the offerors. [DoD Standards of Conduct Office pamphlet, "Ethics Issues in Government-Contractor Teambuilding," 15 Jul 99, page 40]

(e) Air Force employees who are engaged in official travel in a vehicle paid for by the Air Force (including a GOV) may not permit contractor personnel to ride in the vehicle. [Opinion of the Judge Advocate General of the Air Force (OpJAGAF) 1996/158, dated 18 Oct 96; OpJAGAF 2000/78, dated 1 Nov 00]. **EXCEPTION:** Air Force employees may permit contractor personnel to share transportation when traveling pursuant to an A&AS contract that has a provision for direct reimbursement of the contractor for travel expenses. [Opinion of The Judge Advocate General of the Air Force (OpJAGAF) 2000/78, dated 1 Nov 00]. The exception does not necessarily permit Air Force employees and contractor personnel to share transportation when traveling pursuant to a non-A&AS support contract, even where the contract has a provision for direct reimbursement of the contractor for travel expenses, and where Air Force employees and contractor personnel work closely together under the contract. [Opinion of The Judge Advocate General of the Air Force (OpJAGAF) 2001/22, dated 18 Apr 01] Air Force employees may not permit contractor personnel to ride in vehicles paid for by the Air Force (including GOVs) in this situation.

10.5 This chapter does not cover all the rules related to travel and transportation. If you have a specific question, you should obtain advice from your ethics counselor. For additional information, please visit <http://www.afmc-pub.wpafb.af.mil/HQ-AFMC/JA/lo/lojaf/ethics/updates/Sharing%20Transportation.doc>.



Transportation and Travel

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1. There are different rules for accepting from a contractor a gift of official travel and a gift of personal travel. Therefore, the first step in the analysis is to determine whether the travel in question is official travel or personal travel.
2. Official travel by government employees must be funded by the federal government directly or through a contract, unless the travel services are accepted as a gift to the Agency in accordance with a statute that authorizes such gifts.
3. Personal travel or transportation service provided by a contractor is considered a gift to the employee from a prohibited source. It may be accepted only if one of the exceptions allowing the acceptance of a gift from prohibited sources applies, or if the government employee pays fair market value.
4. The rules on this subject are complicated and change from time to time. Therefore, when you have a specific question in this area, you should obtain advice from your servicing legal office.
5. When deciding whether or not to accept a gift of travel or transportation from contractor personnel, government employees should consider the appearance that will be created if they accept the gift.

Chapter 11 – Safety

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11.1 Safety is paramount in all aspects of the job, whether that job is accomplished by government or contractor personnel! It is important to understand the distinctions between the government and the contractor when administering safety programs. The government's primary interest in contractor safety focuses on protecting its facilities and employees from hazards posed by contractors that might adversely affect government personnel, equipment, facilities or mission. The government does not assume responsibility for ensuring the protection of contract workers. That responsibility rests clearly on the contract worker's employer (the contractor) as evidenced by section 5(a)(1) of the OSH Act.

11.1.1 System safety is the process of identifying hazards, assessing the risks, and taking corrective actions to reduce or eliminate the risks to acceptable levels. System safety is primarily applied to acquisition and sustainment of systems and equipment. System safety programs are tailored to the complexity and cost of the systems. For example, the F/A-22 has an extensive system safety effort, while a munitions handling trailer would have a reduced program. MIL-STD-882, DOD Standard Practice for System Safety, is the primary contractual tool to achieve system safety on a program. Typically, in large program offices, system safety requirements are executed by the contractor. DODI 5000.2, Operation of the Defense Acquisition System requires that for acceptance of mishap risks identified by the program, the Component Acquisition Executive (CAE) is the acceptance authority for high risks, PEO-level for serious risks, and the Program Manager (PM) for medium and low risks. Air Force requirements are spelled out in Chapter 9 of AFI 91-202, The USAF Mishap Prevention Program.

11.2 Employers have a duty under the law to train employees regarding work hazards and to furnish employees with suitable protection from such dangers. [29 USC 654(a)] However, when the worker performing work at a facility is an employee of a contractor and not an employee of the facility owner (e.g., government), the facility owner is not required to ensure that contract personnel are in compliance with the Occupational Safety and Health Administration (OSHA). This means that the facility owner is not required to provide either OSHA training or safety equipment to contract personnel. The contractor has a legal duty to ensure that its personnel are provided proper OSHA training, safety equipment, and physical examinations under the OSHA "general duty" clause. [29 USC 654(a)(1) and 29 USC 652(5)] If the Air Force were to provide contractor personnel with OSHA training (or safety equipment), it would open the door to substantial, potential liability for negligent training of contractor personnel. If a court determined that a contractor employee was negligently trained or was provided faulty safety equipment by

the Air Force, and the negligent training caused the contractor employee or other persons to be injured, the Air Force could be held liable under the Federal Tort Claims Act (FTCA). [28 USC 1346 and 28 USC 2671] However, if the contractor trained the contract employee, and a court later determined that negligent training caused the injuries, the Air Force would almost certainly prevail in any lawsuit by arguing that the contractor's negligence was the direct cause of the injuries.

11.3 Contracting officers must also consider liabilities associated with providing government-furnished occupational health support to contractor personnel (e.g., eye exams for contractors working with lasers, respirator fit tests). DODI 6055.1, DoD Safety and Occupational Health (SOH) Program, which sets forth policy, procedures and responsibilities for administering a comprehensive DoD SOH program, does not apply generally to DoD contractor personnel and contractor operations. In peacetime, operations performed in the continental United States or its territories or possessions, the contractor is responsible directly to the Federal or State OSHA for the safety of contractor personnel. Paragraph E5.1 of DODI 6055.1 states,

“DoD safety and health in contractor plants and contractor operations on DoD property are generally limited to helping to ensure the safety of DoD-owned equipment; protection of the production base; protection of government property and on-site DoD personnel from accidental losses; and the protection of the general public. The contractor is responsible for the safety and health of his or her employees and protection of the public at contractor plants and work sites.”

11.3.1 There are at least three risks that must be considered when the government contemplates providing physical examinations to contractor personnel:

- (a) The government-provided examination could be used in litigation to establish that the government exercised oversight for contractor personnel. If government oversight is established, the government would assume legal responsibility for the health and safety of the contractor personnel. Such a determination would unnecessarily subject the government to legal liability for on-the-job injuries under the FTCA.
- (b) The government may incur liability under the Privacy Act based on ambiguities over creation and ownership (including improper disclosure) of resulting medical records [Health Insurance Portability and Accountability Act (HIPAA), P.L. 104-191].
- (c) The government may subject itself to liability for malpractice under the FTCA based on the performance of the exam. For example, contractor personnel receiving laser eye exams could allege the government physician failed to diagnose a condition unrelated to laser exposure, including, but not limited to, glaucoma, unrelated eye damage, or cancer. Any such allegation of malpractice, whether or not successful, would require costly efforts to defend against even unsupported allegations.

Based on these potential liabilities, medical examinations should not be provided to contractor personnel.

11.4 In addition to the risks identified above, the contracting officer must consider a possible violation of the Anti-Deficiency Act (ADA) when occupational health services are provided to contractor personnel in a location where the services are readily available. Since the government has no legal duty to provide OSHA training or exams to contractor personnel, providing these services would arguably be a violation of the "Purpose Statute" and may result in a violation of the ADA. The Purpose Statute [31 USC 1301(a)] states that funds appropriated for the operation of federal agencies may only be spent for the "proper purposes" of those appropriations. A proper purpose is generally determined by reference to whether the expenditure is essential to achieve the purpose for which the appropriation was passed. To this end, base logistics support is extended as a matter of contract on a reimbursable basis to defense contractor personnel working in overseas locations where comparable supplies or services are not otherwise readily available. In recognition of such services, it is not uncommon for the contracting activity to negotiate a proportioned reduction in the overseas relocation premiums or cost of living adjustments that would otherwise be paid by the employer and passed along in the contract price. However, reduced cost to the acquiring activity alone is insufficient as a justification for providing goods or services in kind.

11.5 Government personnel must avoid taking actions which would put them, or appear to put them, in direct control of a worksite owned or controlled solely by a contractor. Contracts should not include anything that establishes a requirement for the government to provide safety or health services to contractor personnel. Likewise, do not include anything in inspection or surveillance programs that would give the appearance that the government is supervising or observing contractor personnel for their personal safety or the safety of their equipment. Requirements for protection of the general public can be included (e.g., barriers around trenches). If a government employee notices a potential OSHA violation, he/she should report the hazard to the contracting officer who can then remind the contractor of its obligation under the contract to comply with all pertinent regulations. Unless there is imminent danger, government personnel (other than the contracting officer) should avoid reporting perceived safety violations to the contractor. Similarly, the government should not perform inspections of contractor-owned worksites, nor should the requirement for government safety inspections be included in the contracts.

11.6 It is extremely important that contracting officers ensure contract statements of work (SOW) are reviewed by the appropriate functional expert before including requirements for safety and occupational health. While review of the SOW, Performance Work Statement (PWS), or Statement of Need (SON) is primarily the responsibility of the requiring activity, the contracting officer has the ultimate responsibility to ensure the review has been properly accomplished by the appropriate functional expert. The following documents outline reviews/approvals **REQUIRED** by these functional experts:

- (a) AFOSHSTD 48-8, Controlling Exposures to Hazardous Materials, requires Aerospace Medicine to provide health/technical evaluation of contract specifications and contractor proposals to ensure proposed worker protection measures are appropriate for the contracted effort as defined in the specifications.
- (b) AFI 48-119, Medical Service Environmental Quality Programs, para 9.8.4 requires Bioenvironmental review all asbestos removal or abatement contracts to ensure proper requirements are identified, and to ensure protection of AF personnel.
- (c) AFOSHSTD 48-137, Respiratory Protection Program, para 5.3 states Bioenvironmental shall assist base contracting in developing contract specifications for fit testing.
- (d) AFOSHSTD 91-25, Confined Spaces, Chapter 7 addresses contractor requirements regarding permits for confined spaces. Any contractual requirement where the contractor will have to perform work that involves a permit-required space entry should be reviewed/approved by Safety.
- (e) AFOSHSTD 91-100, Aircraft Flight Line-Ground Operations and Activities, para 1.2.18 states Air Force ground safety, fire, and bioenvironmental officials will review contracts to ensure safety in flight line contractor operations.
- (f) AFI 91-202, The US Air Force Mishap Prevention Program, para 3.5 states AF Safety personnel must not put anything in the contract that establishes a requirement for the Air Force to protect contractor personnel or their equipment.
- (g) The installation contracting activity will check for safety office review prior to acceptance.
- (h) AFI 91-204, Safety Investigations and Reports, para 4.9 establishes requirements for investigation of contractor mishaps. The AFI also provide guidance on establishing the class of a mishap as well as investigation procedures and formal reports.
- (i) AFI 91-210, Contract Safety, para. 6.4 states the Safety staff is responsible for reviewing the SOW to ensure applicable safety requirements are present. **Note:** The contract should only include a requirement for a written contractor safety plan if the contract is inherently hazardous and should provide safety for personnel accomplishing the work.
- (j) DODI 4145.26, DoD Contractor's Safety Requirements for Ammunition and Explosives, para 4.1.2 states that contracting officers coordinate with appropriate safety departments/offices responsible for contractual safety requirements involving ammunition and explosives, to ensure proper contractual safety input.

11.6.1 Additionally, contracting officers will ensure safety review has been accomplished on all contracts that result in:

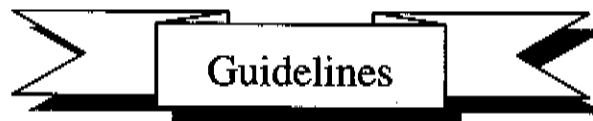
- (a) A contract containing the ground/flight risk clause.
- (b) A contract containing property protection clauses.
- (c) Exposure of AF personnel to the hazards of work to be performed.
- (d) Government or contract flight operations.
- (e) As recommended by the Center Safety Staff or when requested by the program manager because of mission criticality of the product or service to be contracted.
- (f) For the purchase of any equipment, vehicles or tools from a locally-prepared specification.
- (g) For the purchase of off-the-shelf equipment, vehicles and tools to be used in a manner not covered by the manufacturers instructions or to be used in performance of potentially hazardous work such as work in confined spaces, degreasing, fuels or servicing.
- (h) A new or modified facility.
- (i) Purchase/procurement of specialized occupational training that exposes AF personnel to chemical, environmental, mechanical, physical or other hazards.

11.7 Another important aspect of safety is what happens in the event of a mishap. The contractor is required to notify the appropriate safety office and contracting officer, or a designated Government Representative (GR) within one hour of all mishaps or incidents at or exceeding \$2,000 (material + labor) for damage to government property. This notification requirement shall also include physiological mishaps/incidents. A written or e-mail copy of the mishap/incident notification shall be sent within 3 calendar days to the GR, who will forward it to the Procuring Safety Office. For information not available at the time of initial notification, the contractor shall provide the remaining information not later than 20 calendar days after the mishap, unless extended by the contracting officer. Mishap notifications shall contain, as a minimum, the following information:

- (a) Contract, contract number, name and title of person(s) reporting
- (b) Date, time and exact location of accident/incident
- (c) Brief narrative of accident/incident (events leading up to accident/incident)
- (d) Cause of accident/incident (if known)

- (e) Estimated cost of accident/incident (material and labor to repair/replace)
- (f) Nomenclature of equipment and personnel involved in accident/incident
- (g) Corrective actions (taken or proposed)
- (h) Other pertinent information

If requested by government personnel or designated GR, the contractor shall immediately secure the mishap scene/damaged property and impound pertinent maintenance and training records, until released by the Procuring Safety Office. For more specific details relating to mishap reporting please refer to AFI 91-202, The USAF Mishap Prevention Program and AFI 91-202, AFMCS1, The USAF Mishap Preventions Program.



Safety

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1. The government does not assume responsibility for ensuring the protection of contract workers. That responsibility rests clearly on the contract worker's employer, the contractor.
2. Government personnel must avoid taking actions, which would put them, or appear to put them, in direct control of a worksite owned or controlled solely by a contractor or contract personnel.
3. Contracts should not include anything that establishes a requirement for the government to provide safety or health services to contractor personnel.
4. If a safety and occupational health requirement must be included in the contract, the program manager and the contracting officer should ensure the Statement of Objective (SOO), SOW or PWS is reviewed, coordinated, and approved by the appropriate functional safety/environmental experts before inclusion in the contract.
5. Program Managers and contracting officers should ensure contractors report mishaps in a timely manner to the Air Force Safety office by including appropriate instructions in the SOO, SOW, or PWS.
6. Contracting officers should ensure that aircraft contracts/lease agreements identify the safety investigation board convening authority. [AFI 91-204, para 2.4.6]

CHAPTER 12 – ORGANIZATIONAL CONFLICT OF INTEREST

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12.1 WHAT IS AN OCI? - An *OCI* is *the existence of a set of circumstances in which a contractor may be unable to render impartial advice to the government, or might have impaired objectivity in performing contracted work; or may obtain an unfair competitive advantage in the marketplace when competing for government offered work where that unfair advantage is obtained during performance of a government contract. This unfair advantage can be introduced when the contractor sets the “ground rules” of procurement thereby biasing a future competition. The essence of OCI is divided loyalty* and it is the government professional’s duty to ensure that it is not permitted to occur, or to continue when discovered.

Essentially three broad categories of OCI can be drawn from the above. They are “Unequal Access”, “Biased Ground Rules”, and “Impaired Objectivity”.

“Unequal Access” which provides unfair competitive advantage typically surfaces when a contractor obtains information not generally available to other competitors where such information would assist them in winning the contract over their competitors.

“Impaired Objectivity” may surface when a support contractor is performing duties that involve assessing or evaluating itself or a related entity.

“Biased Ground Rules” most often come into play when the contractor is writing the SOW, performing systems engineering, or providing technical direction efforts.

(NOTE: While firewalls between affiliates within the same corporate entity can serve to mitigate OCIs associated with “Unequal Access”, it should be noted that the GAO has consistently held that firewalls cannot mitigate OCIs associated with “Impaired Objectivity” and “Biased Ground Rules”).

12.2 WHY IS AVOIDING OCI IMPORTANT? – It is important to avoid a real or apparent OCI to maintain the trust and confidence of the American taxpayer and contractor community. Further, the best decisions made and actions taken can only occur in a transparent, fact-based environment, free of hidden personal objectives or gain.

12.3 KEY WAYS TO DEAL WITH OCI

- (a) **Avoid** - Prevent the occurrence of an actual or potential OCI through actions such as excluding sources from a competition or eliminating a segment of work from a contract or task to eliminate the potential for an OCI.
- (b) **Neutralize** - Negate, through a specific action, potential or actual OCI related to (1) contractor objectivity during contract performance or (2) an unfair

competitive advantage. Specific actions would include encouraging and facilitating support contractor recusal, excluding or severely limiting support contractor participation in source selection activities, and otherwise barring access to competition sensitive data.

(c) Mitigate - Reduce or alleviate the impact of **unavoidable** OCIs to an acceptable level of risk so that the Government's interests with regard to fair competition and/or contract performance are not prejudiced. This is facilitated in development of an OCI Mitigation Plan (see below) and may include development of a firewall.

12.3.1 OCI MITIGATION PLAN – A contractor designs an OCI Mitigation Plan which proposes actions to identify and reduce actual or apparent OCIs to an acceptable level. You should ask the contracting officer or program manager for a copy of the mitigation plan.

12.3.1.1 COMMON ELEMENTS OF OCI MITIGATION PLANS

- (a) Non-Disclosure agreements
- (b) Controlled access to sensitive information
- (c) Establishment of an employee OCI awareness/compliance program
- (d) Physical separation of contract employees from sensitive data, i.e. firewall.
- (e) Organizational separation
- (f) Management separation
- (g) Limitation on personnel transfers

12.4 RESPONSIBILITIES OF GOVERNMENT PERSONNEL - If an OCI is not spotted and addressed early, it can STOP an acquisition or contract performance in its tracks. The Contracting Officer is responsible for identifying OCIs. The Contracting Officer is responsible for resolving OCIs before contract award in order to ensure that award can be made and performance maintained. All government personnel, without exception, are responsible for helping the Contracting Officer prevent actual, potential, or appearance of an OCI.

12.5 CONTRACT SITUATIONS REQUIRING SPECIAL ATTENTION - There are times during the course of business when closer scrutiny is required.

12.5.1 Contractor Support Services: *The access afforded a support contractor who may have a work space in your area or is hired to assist you in (e.g. Advisory and Assistant Services (A&S) contracts, Systems Engineering & Technical Assistance (SETA) task order, Etc.) key elements of the government's mission, and their ability to craft advice and provide assistance may place them in greater likelihood of an OCI situation.*

Participation of such support contractors pertaining to evaluation or analysis of proposals is not normally permitted. If circumstances demand their participation,

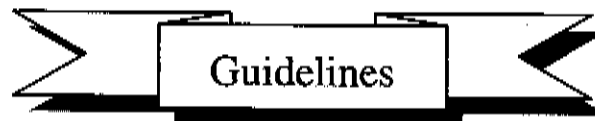
obtain head of agency approval IAW FAR 37.204. Only government military or civil service individuals should be involved with source selections.

12.5.2 OTHER SUPPORT REQUIRING SPECIAL ATTENTION:

- (a) Management support services
- (b) Consultant or other similar professional services
- (c) Contractor preparing/furnishing complete specs for non-development items to be procured competitively
- (d) Contractor requires proprietary information from others to perform a government contract

12.6 OTHER POTENTIAL CONFLICTS. Government personnel generally and contracting officers specifically are also responsible for being alert to the actual, potential, or appearance of other conflicts of interest, such as a contractor employee having interests that may differ from his/her employer's interests and/or that of the Government. If an actual, potential, or appearance of such a conflict of interest arises, the contracting officer should seek to avoid, neutralize or mitigate the conflict in a manner similar to addressing OCIs.

12.7 CONCLUSION – It is important to avoid real or apparent OCI to maintain the trust and confidence of the American taxpayer and contractor community. Since the contractor community needs to have absolute confidence in the impartiality of the government acquisition process, it is our professional duty to maintain the faith of the contractor community. If you suspect OCI, speak up!



General Guidelines for Maintaining a Proper Government-Contractor Relationship

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DO's:

- (1) Do ensure that non-disclosure agreements are appropriately executed/in place.
- (2) Do structure the contract/tasks and the work environment to solicit advice, not decisions from your support contractors.
- (3) Do identify all support contractors used by other organizations and ensure that the relationships are clearly understood in order to facilitate appropriate access to data and other information. Work with other government organizations to ensure that proper controls are in place.
- (4) Do have an OCI Mitigation Plan where OCI is a potential problem.

- (5) Do restrict what is discussed around contractors no matter how much an individual contractor is trusted. Be conscious of what is said in meetings attended by A&AS contractors and in telecons that they can overhear. Ask a contractor to leave a meeting if their presence creates an actual, apparent, or potential OCI.
- (6) Do identify any OCI issues that subcontractors have that the prime may not have. While the prime may not have an OCI issue the subcontractor may be called upon to perform efforts that would create an OCI, for example if they are asked to provide support to a test involving a division of their own company.
- (7) Do be alert for changes in OCI situation such as Mergers, Company reorganizations, etc.
- (8) Do recognize that there are some OCI risks that cannot be mitigated. This may require identification of an alternate source for support, or execution of an appropriate waiver. Bottom line: it may not be possible to obtain company/person(s) desired. Recent GAO decisions have overturned awards due to OCI issues.

DON'Ts:

- (1) Don't permit the support contractor to make program, or acquisition decisions.
- (2) Don't allow support contractors to provide advice, oversight, insight, review, monitoring, etc. of companies or individuals with whom they have a vested interest unless specifically approved in a risk mitigation plan. Approved situations should be very rare.
- (3) Don't use support contractors for technical evaluations, performance reports, etc, unless there is no viable alternative.
- (4) Don't allow A&AS Contractor employees to represent their employer to the Government on an issue that they participated in as a government employee. This prohibition includes working for a principle contractor, a support contractor, or subcontractor where they are providing advice to the Government regarding a procurement they worked on as a Government employee.
- (5) Don't grant access to cost data/negotiation objectives to support contractor employees except where it has been affirmatively determined appropriate by the **Agency Head**.
- (6) Don't forget that military personnel on terminal leave may not interface with the Government as contractor representatives.
- (7) Don't grant access to material/meetings that are not essential for the A&AS individual to do their job.
- (8) Don't treat retired senior officers working as support contractors as if they still have military authority.

CHAPTER 13 - SUMMARY

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The following is a summary provided by this guide:

1. Contractor personnel are not government employees.
2. Respect the employer-employee relationship between contractors and their employees.
3. Identify possible conflicts of interest of contractor personnel.
4. Don't ask contractor personnel to perform "out of scope" work, personal services, or "inherently governmental functions."
5. Resolve inappropriate relationships between federal employees and contractor personnel.
6. Ensure contractor personnel are identified in dealings with other employees.
7. Safeguard procurement, Privacy Act, confidential or other non-public information.
8. Avoid giving incumbent contractors a competitive advantage.
9. Do not allow contractors to perform end-of day security checks unless required by contract.
10. Do not pay contractors to participate in morale building events.
11. Do not interfere with contractor personnel time management.
12. Beware of contractor personnel bearing gifts!
13. Contractor personnel may use government resources for official business when authorized by the contracting officer.
14. If required by the contract, the government may provide training to contractor personnel that is deemed an integral part of the requirement and necessary to perform tasks uniquely identifiable to the government.
15. Contractor transportation provided for official business may, under certain circumstances, be accepted in advance by an appropriate agency official as a gift to the government.
16. Government-owned and leased vehicles may be used only for official purposes.

17. Generally, the government should not provide motor vehicles to contractor personnel in performance of their work.
18. The government does not assume responsibility for ensuring the protection of contract workers. That responsibility rests clearly on the contract worker's employer, the contractor.
19. Contracts should not include anything that establishes a requirement for the government to provide safety or health services to contractor personnel.
20. Consult local legal counsel for specific legal/ethics issues.

LIST OF ACRONYMS

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A&AS	Advisory and Assistance Services
ADA	Anti-Deficiency Act
AF	Air Force
AFI	Air Force Instruction
AFOSHSTD	Air Force Occupational Safety and Health Standard
AETC	Air Education and Training Command
AFMC	Air Force Materiel Command
BX	Base Exchange
CAE	Component Acquisition Executive
CFC	Combined Federal Campaign
CFR	Code of Federal Regulations
CPAR	Contract Performance Assessment Report
DoD	Department of Defense
DODD	Department of Defense Directive
DODI	Department of Defense Instruction
DODR	Department of Defense Regulation
E-mail	Electronic Mail
FAR	Federal Acquisition Regulation
FFP	Firm Fixed Price
FTCA	Federal Tort Claims Act
G&A	General and Administrative
GOV	Government Official Vehicle
GR	Government Representative
IAW	In Accordance With
IPT	Integrated Product Team
JER	Joint Ethics Regulation
MIL-STD	Military Standard
O&M	Operations and Maintenance
OSH	Occupational Safety and Health
OSHA	Occupational Safety and Health Administration
OGE	Office of Government Ethics
PEM	Program Element Monitor
PEO	Program Executive Officer
PM	Program Manager
PPBE	Planning, Programming, Budgeting and Execution System
PR	Purchase Request
PWS	Performance Work Statement
SOH	Safety and Occupational Health
SON	Statement of Need
SOO	Statement of Objective
SOW	Statement of Work
TDY	Temporary Duty
USAF	United States Air Force
USC	United States Code

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41 CFR Part 102-42

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UNITED STATES CODE

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5 USC 3109

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26 USC 501

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28 USC 1346

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Acceptance of Travel and Related Expenses from Non-Federal Sources
False Claims

31 USC 3729

Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information (referred as the Procurement Integrity Law)

41 USC 423

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FAR

JER

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